IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7411 OF 2004

M/s. Duwell Agency & Ors. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. P. S. Dani for the Petitioner.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 20, 2006.

P.C. :

The Petitioners have filed this petition for appropriate directions, directing Respondent No.1 to forthwith frame Rules for conducting proceedings for issuance of recovery certificates under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, or in the alternative to declare the provisions of Section 101 of the said Act as being unconstitutional and strike down the same. Finally it is prayed that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, shall override the provisions of the Maharashtra Co-operative Societies' Act, 1960 and once action is taken under Section 101 of the Act, all proceedings under the Maharashtra Co-operative Societies' Act, should be remained stayed till the

proceedings under Securitisaion Act are completed.

As far as prayer (a) for directing Respondent No.1 to frame Rules by issuance of writ of Mandamus is concerned, such a prayer to frame rules which partake of a legislative power cannot be granted, since there is a clear provision laid down for the issuance of recovery certificates in the Act.

As far as the prayer for declaring Section 101 of the Maharashtra Co-operative Societies' Act, 1960 as unconstitutional is concerned, the issue has been decided by a Division of this Court in **M/s. Annapurna Engineering Corporation Vs. State of Maharashtra** (Writ Petition 3489 of 2002, decided on 11th June 2003).

As far as prayer (b) is concerned, the same is also not tenable for the simple reason that Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, provides that the provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts

(Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force. Apart from that there is a remedy as and by way of revision under Section 154 of the Maharashtra Co-operative Societies' Act, 1960. The Learned Counsel appearing on behalf of the Bank states that the Petitioners have already availed of that remedy by filing a revision. In that view of the matter, in our opinion, no case is made out for interference. The petition is rejected.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.